From:	Ehud Barak <ehbarak1@gmail.com>
To:	Norman Menachem Feder <nmf@caspilaw.com>
CC:	
Date:	Thu, 6/4/2015 8:45:24 PM
Subject:	Re: Barak/MOMENTS OF TRUTH

Menachem
Pl call me.
EB

Sent from my iPhone

On Jun 4, 2015, at 18:20, Norman Menachem Feder <nmf@caspilaw.com> wrote:

Norman Menachem Feder
Caspi & Co. | 33 Yavetz Street, Tel Aviv 65258, Israel
T: +972 3 796.1220 | F: +972 3 796.1320 | M: +972 523 329.329
nmf@caspilaw.com

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From: Bash, Holly [mailto:Holly.Bash@macmillan.com]
Sent: Thursday, June 04, 2015 6:22 PM
To: Norman Menachem Feder; Flip Brophy
Cc: Schoonmaker, Amanda; Holly Hilliard
Subject: RE: Barak/MOMENTS OF TRUTH

Norman, I spoke to Tim Bartlett and we cannot change the delivery date as the book is scheduled for publication according to that date.

So, if you can just send me the address for Ergo.

Many Thanks

Holly Bash
Director of Contracts

Macmillan Publishers
175 Fifth Avenue, 6th Floor
New York, New York 10010
holly.bash@macmillan.com
(p): 646-307-5191
(f): 212-529-0594

From: Norman Menachem Feder [mailto:nmf@caspilaw.com]
Sent: Thursday, June 04, 2015 10:57 AM
To: Flip Brophy; Bash, Holly
Cc: Schoonmaker, Amanda; Holly Hilliard
Subject: RE: Barak/MOMENTS OF TRUTH

Flip and Holly,
10% to each of Flip and Deborah. Ergo should get the rest. Ned should not be paid directly from the publisher. We think the deadline for delivery of the work should be moved to end of October.
Many thanks,
Menachem

Norman Menachem Feder
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From: Flip Brophy [mailto:flip@sll.com]
Sent: Friday, May 22, 2015 6:25 PM
To: Schoonmaker, Amanda
Cc: Norman Menachem Feder; Bash, Holly; Holly Hilliard
Subject: Re: Barak/MOMENTS OF TRUTH

10 and 10

Typos by iPhone

On May 22, 2015, at 11:05 AM, Schoonmaker, Amanda <Amanda.Schoonmaker@macmillan.com> wrote:

> Dear Menacham and Flip,
>
> Holly Bash and I will await payment directions for paragraph 23.
>
> Also, would you please confirm the percentages payable to each agent?
>
> Thank you very much.
>
> Best,
>
> Amanda
>
> Amanda Schoonmaker
> Senior Contracts Associate
> Macmillan Publishers
> amanda.schoonmaker@macmillan.com
> p: (646) 438-6073
>
> ---
>
> **From:** Frost, Diana
> **Sent:** Friday, May 22, 2015 10:51 AM
> **To:** Norman Menachem Feder
> **Cc:** Bash, Holly; Schoonmaker, Amanda
> **Subject:** RE: Barak/MOMENTS OF TRUTH
>
> Menacham,
>
> Here is a redraft comparing today's draft with the May 14th draft. I have not made any changes to paragraph 23 – Amanda or Holly will do that when you send the specific directions. Again, all necessary taxpayer forms will need to be provided before payments can be processed.
>
> My regards,
>
> Diana
>
> D I A N A F R O S T ‖ *Macmillan*
> (646) 307-5098 voice (212) 529-0594 fax diana.frost@macmillan.com
>
> ---
>
> **From:** Norman Menachem Feder [mailto:nmf@caspilaw.com]
> **Sent:** Friday, May 22, 2015 10:03 AM
> **To:** Frost, Diana
> **Cc:** Bash, Holly; Schoonmaker, Amanda
> **Subject:** RE: Barak/MOMENTS OF TRUTH
>
> The Author would prefer that the publisher make the payments directly. The breakdown I can get on Monday, but feel free to draft for that structure. Please let me know to whom to communicate the numbers (with a copy to you, of course).
>
> _____
> Norman Menachem Feder
> Caspi & Co. | 33 Yavetz Street, Tel Aviv 65258, Israel
> T: +972 3 796.1220 | F: +972 3 796.1320 | M: +972 523 329.329
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>
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From: Frost, Diana [mailto:Diana.Frost@macmillan.com]
Sent: Friday, May 22, 2015 4:57 PM
To: Norman Menachem Feder
Cc: Bash, Holly; Schoonmaker, Amanda
Subject: RE: Barak/MOMENTS OF TRUTH

Menacham,

I believe we can. I still need info from you regarding the payment directions so that we can fix that clause. Then you'll get a redraft.

My colleagues Holly Bash and Amanda Schoonmaker in the Contracts Department will be able to assist with any final details in my absence next week. I've copied them both here.

Diana

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(646) 307-5098 voice (212) 529-0594 fax diana.frost@macmillan.com

---

From: Norman Menachem Feder [mailto:nmf@caspilaw.com]
Sent: Friday, May 22, 2015 9:54 AM
To: Frost, Diana
Subject: RE: Barak/MOMENTS OF TRUTH

Diana,
Hi. Can we wrap up open issues today, before you take off for the week?
Best,
Menachem

Norman Menachem Feder
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nmf@caspilaw.com

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From: Norman Menachem Feder
Sent: Thursday, May 21, 2015 7:37 PM
To: Frost, Diana
Subject: RE: Barak/MOMENTS OF TRUTH

D,
Re the marketing, the proposal is good, but can we add that the marketing will be disparage the author?

Norman Menachem Feder
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From: Frost, Diana [mailto:Diana.Frost@macmillan.com]
Sent: Thursday, May 21, 2015 7:26 PM

To: Norman Menachem Feder
Subject: RE: Barak/MOMENTS OF TRUTH

Norman,

It was a pleasure to speak earlier.

You were also going to get me info regarding the amounts/percentages of the advance payments that we are directed to pay the respective agents and the writer. I'll also need an address for the writer. And we will need the necessary taxpayer id forms before we can make the payments. W8-BENs I believe.

As to the promotion issue, would it be sufficient to address your concern to include something to the effect that we will use the author's pre-approved biography and likeness as approved, without change (unless a change is subsequently approved by the Proprietor or the Author). If that works for you I'll check it with my client.

Just so you know, publishers show their authors much more marketing and promotional materials than they are contractually required to show them – that is common practice in the business and it is the way my client operates.

Diana

From: Norman Menachem Feder [mailto:nmf@caspilaw.com]
Sent: Thursday, May 21, 2015 12:19 PM
To: Frost, Diana
Subject: RE: Barak/MOMENTS OF TRUTH

Diana,
Thanks for the conversation. As requested, our proposed language:

5.
The Publisher will include in any license to any unaffiliated third party of Hebrew-language Translation Rights a provision requiring consent the Author for the choice of translator for the right of the Author to submit to the publisher in Hebrew of additional material for inclusion in the Hebrew-language edition of the Work.

8.
Notwithstanding the foregoing in this Section 8(a), the Publisher recognizes that the Author is an expert in his field and participates in various business ventures and agrees that the Author may provide consultancy services , engage in business activities and ventures, cooperate with third party biographers, deliver lectures, and participate in interviews, including in the public media, and participate in films, documentaries, television shows and webinars and the like, whether or not regarding similar themes and concepts as are encompassed within the general subject matter of the Work, all without restriction hereunder and the Author is free to engage in any of the forgoing activities without notice to or permission of Publisher.

Norman Menachem Feder
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nmf@caspilaw.com

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From: Frost, Diana [mailto:Diana.Frost@macmillan.com]
Sent: Friday, May 15, 2015 3:33 PM
To: Norman Menachem Feder
Subject: Barak/MOMENTS OF TRUTH

Dear Mr. Feder,

Thank you for your patience. I am at a legal conference today, but I've incorporated our responses to your comments into a redraft of the agreement, attached, and also provide responses below, in red. I am generally available Monday and would be happy to schedule a call with you to review any outstanding points.

1. Advance. (Section 2). It should be stated clearly that the advance is non-refundable, save as provided for in Section 9(e).
See redraft.

Please delete 9(f) as it is irrelevant (the Work is only one Book) and somewhat inconsistent with 9(e).
See redraft. These "if" clauses re: multibook contracts are generally retained in our contract forms because they do not operate if there is only one book under contract; however, as a courtesy to you and your client, in this case I have stricken through those clauses throughout.

2. Royalties. (Section 3). Royalty obligations should survive any termination of the Contract.
Please see paragraph 20(b); the provisions of paragraph 27 ("Accounting and Payments") survive termination.

3. Hebrew Translation. (Section 5). (i) The Hebrew translator and the Hebrew translation of the Work should be subject to the Proprietor's prior consent. (ii) The Proprietor should have the right to add material to the Hebrew version of the Work that does not necessarily appear in the English version. This is due to the more aware nature of the Hebrew reader when it comes to events and personalities. (iii) Any rights in editorial or translation work should be assigned to the Proprietor.
It is customary in the publishing business for translators or foreign language publishers to own the copyright in their translations, and any sublicense we enter into for publication of foreign language editions would leave it up to the foreign language publisher to arrange for the translation and whatever copyright ownership arrangement they agree to with the translator. That said, the foreign publisher is only authorized to utilize the translation if they have a grant of rights to publish the work from us, and only so long as that grant continues.

With respect to your concerns about license of Hebrew language publication rights, while we cannot commit to a Hebrew language publisher agreeing to the addition of new material, we could incorporate this sort of provision in our agreement with Ergo, Ltd.

The Publisher will exercise reasonable efforts to include in any license to any unaffiliated third party of Hebrew-language Translation Rights a provision allowing for consultation with the Author with respect to the choice of translator for any and the opportunity to submit to that third party publisher additional material for inclusion in the Hebrew-language edition of the Work.

4. Copyright. (Section 6). (i) The Publisher should be required to register copyright at or before publication, and not just in the U.S., but also in other relevant countries.
Our contract is worded to conform to the U.S. Copyright Act regarding timing of registration.

We commit to register copyright in the books we publish in the United States only.

(ii) The copyrights of foreign language editions should belong to the Author and should be registered by the Publisher where relevant.
Please see comment above.

5. Reserved Rights (Section 7). The Contract should state that authorship rights and moral rights belong exclusively to the Author.
The contract already states that the reservation broadly enough to cover whatever rights are not expressly granted.

6. Non-compete. (Section 8). (i) It should be made clear that the non-compete obligations do affect the Proprietor's ability to directly or indirectly exploit rights retained by it under the Contract, provide consulting services, engage in business of any sort, cooperate with third party biographies, deliver lectures, and participate in interviews, including in the public media, and participate in films, documentaries, television shows and the like.
AJS: DF, please see adjusted "expert" language…

(ii) The reference in Subsection 8(a) to "fiction" should be deleted and the sentence adjusted accordingly.
See redraft.

(iii) Sections 8(d) (g) should be deleted for lack of relevance.
See redraft. While they are not operative in any event, we delete them as a courtesy.

7. Deliverables. (Section 9). (i) Section 9(c) – The Publisher's right to terminate after the delivery deadline and cure period are missed should be available only for so long as the Work has not been delivered.
We've already inserted a requirement of a notice to the Proprietor here re: failure to deliver.

(ii) The Publisher's right to return of advances should be limited to advances paid and only in the case of termination for failure to deliver.
Not clear what you refer to here. 9(c) addresses termination upon failure to deliver; the amount to be repaid is limited to "all sums of money previously paid to or on behalf of the Proprietor under this Agreement" to cover situations where we have paid part of the advance to third parties per direction from the Proprietor. There are also other situations where the Publisher is entitled to receive repayment of the advance – 9(e) and 12 for example.

8. Section 9(e) - If the Work is duly rejected, the Contract (including non-compete obligations) should terminate (save for return of advance as per Section 9(e)).
In order to fully protect the publisher, we permit the author to enter into other rights arrangements, subject to certain specified conditions, but will only revert rights upon receipt of full repayment as spelled out in 9(e). This gives us maximum leverage to ensure repayment. I'm happy to talk this through with you in a phone call.

9. Editors and Corrections. (Section 10). The Proprietor should be permitted to make changes at various (including final) proof stages without cost.
Making changes late in the production process, and after the book has been typeset, can be very costly to the Publisher. This is why we limit percentage Publisher can cover to 10%. This discourages authors from rewriting the text at a stage when it is very costly and could result in delayed publication. This is a standard provision in US publishing agreements.

10. Section 12: "unearned advances previously paid" is not clearly explained (this occurs in a few places; e.g. Section 17).
An advance is simply royalties paid in advance, so in cases where a legal problem arising after publication (covered under this paragraph) causes us to cease publication and terminate, we are entitled to repayment of the advance, but only to the extent not already offset by royalty earnings under paragraph 5. This is actually a change sought by literary agents, in fairness to authors.

11. Promotion (Section 13). Promotion should be reasonable and supportive of the Author's reputation.
Need to discuss with you exactly what your concerns are here.

12. Subsequent Edition. (Section 15). It should be made clear that in the event of a new edition, the Proprietor should have the opportunity to revise the Work.
Cannot agree, as this would obligate us to make revisions to other editions, such as paperback. That does often occur but it is not always warranted. All this paragraph concerns is what the Publishers rights are in any material that the author submits to the publisher for inclusion in subsequent editions or for use in promotion.

13. Warranty. Section 21 (a)(viii) is missing a conjunctive "and".
We've corrected the grammatical error by deleting the work "not" that appears in bold.

14. Indemnification. (Section 21(b)(ii)). The Publisher's obligation should be to "indemnify" not simply to "cover" and should have the same scope as the indemnity in Section 21(b)(i).
This paragraph describes our insurance coverage; it is not an indemnity by the Publisher. I have, however, included an appropriate cross-indemnity from the Publisher to the Proprietor.

16. Option. (Section 22). In the 11th line after "agreement," please add "for any or no reason,".
Doesn't seem like a necessary change to us. What is the concern here?

17. Payments. (Sections 23). The Proprietor prefers that payments from the Publisher be made directly to the ultimately intended recipients (Author, Writer and the Agents), rather than be routed through the Proprietor's agents. Can this be done?
The Publisher would prefer to make one payment, to be disbursed by the agent to the various payees. This avoids confusion over matters such as recoupment of the advance and repayment in certain scenarios.

18. Assignment. (Section 25) In event of any permitted assignment by the Publisher, the Publisher should continue to be responsible for the acts or omissions of the assignee.
An assignee in any of the specified scenarios would assume all of our duties and obligations under the Agreement.

19. Miscellaneous. (Section 38). There should be no reference to the Writer's name or other likeness in connection with the Work, as the Writer is not intended to have any authorship rights.
See revised, we've removed obligation to obtain rights to use Writer's name or other likeness.

20. The Contract lacks a survival clause, and certain Publisher obligation (such as payment obligations) should survive termination of the Contract.
Paragraphs that will survive termination are described in 20(b).

21. Due to a number of paragraph deletions various cross-references need to be revised.
For clarity, we use strikethrough in clauses that are not relevant, in lieu of simply deleting. I don't believe this creates problems with cross-references, but if you identify such a problem please tell me what it is and we'll correct.

After you have review the above please let me know when is convenient for you to talk by phone to resolve any remaining issues.

My regards,

Diana

DIANA FROST ‖ *Macmillan*
(646) 307-5098 voice (212) 529-0594 fax diana.frost@macmillan.com

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<Moments of Truth Comparison May 14 to May 22nd drafts (680096_1).docx>

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